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ABSTRACT

There have been many recent developments concerning academic freedom and responsibility. The latter is especially important because, with the rediscovery of the 1871 Civil Rights Act, individuals and institutions can be sued for money. As regards teacher preparation programs in particular, there are four critical times for decisions which could result in court action against those who make the decision: (a) when the candidate applies for admission to the teacher education program, (b) when the student applies for his student teaching assignment, (c) when a decision is made about whether or not the student will be allowed to continue in the program, and (d) when a decision is made regarding a recommendation for a teacher's certificate. The latter has become especially important when involving moral conduct. Another important development has been the so-called Buckley Amendment which applies to any institution receiving federal support in any form and which outlines the rights of all college students. (PB)

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LEGAL PROBLEMS OF TODAY'S JUNIOR COLLEGES

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LEGAL PRINCIPLES BY WHICH COURTS DECIDE CASES

In no place in our society have the struggles for the rights of individuals been more intense than on our college and university campuses. But this should not be surprising, for in any free society the rights and freedoms of the individual are of paramount concern. The vast majority of all the reported court decisions in the United States relating to higher education deal with individual rights and responsibilities. These decisions all underscore the fact that the idea that the Constitution should follow students to the campus has now been accepted by the courts and the results have been revolutionary.

Since the landmark Dixon[1] case in 1961, there has been a proliferation of court cases which have great effect upon the daily decisions which academic administrators must make. Therefore, today it is absolutely imperative that educators continually be aware of the legal parameters within which they may make decisions.

There was much consternation following Dixon and some of the subsequent decisions that college and university officials were being stripped of any discretion and would not be able to administer their campus. It is now

citizen, after looking at all of the court cases affecting students, that the courts of the land generally are more than willing cooperate and collaborate with all segments of our society and diversities as they attempt to maintain a stable and responsible educational institution. It cannot and, of course, does not mean that the courts have the overriding duty to determine what a majority of administrators really need to accept some of the responsibilities that pertain to their positions.

Until recent times it was accepted by those under 21 by the vast majority of the states and the local boards of education to centralize control of the majority of students being chosen, enforced and even fitted into practically all public schools and to accomplish by law that almost all aspects of higher education may be affected either directly or indirectly by this plan of action.

Since the 26th year in 1971, students in public schools possess the right to all due process protection in any disciplinary proceedings which involves long-term suspension or expulsion. This means that in those types of proceedings an accused student must be given adequate notice and an opportunity for a hearing. This also includes those procedures outlined

the Court declared that the revocation of a teacher's certificate would be upheld if the evidence disclosed that the teacher's retention "poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher."[9]

The question of what constitutes immoral conduct to the extent that an individual should not be allowed to teach is one whose answer is most elusive. In a case of this type, the California Supreme Court upheld the revocation of the certificate of an elementary teacher who performed oral copulation acts witnessed by others at a "swingers" party. The Court declared that the party was in sort of a semi-public atmosphere and that her actions constituted a flagrant display which indicated a serious defect in moral character. Since it is expected that teachers set an example for their students, it was felt that because she openly engaged in the sexual acts witnessed by others, she might try to inject her views of sexual morality into the classroom.[10]

One of the most recent legal developments which may have many implications for those responsible for teacher education and which has been so widely discussed in higher education the past few months[11] is the passage by

Congress of the so-called "Buckley Amendment." This act, with recent enacted modifications, outlines the rights of all college students of any age, whether they are enrolled in either public or private institutions. If the institution accepts any type of federal funds then the law is applicable and I believe that there are only two colleges in this country that refuse federal support in any form. The law requires that the college notify its students of their rights under this act. Under this law students and former students have the right to inspect their records and must be given a hearing to challenge any alleged inaccuracy of those records. The legislation was not designed to allow a rejected applicant to challenge the recommendations on which the institution based its decision. Also, it was not designed to allow parents or students to contest grades.

Records to be opened to students are defined as "those records, files, documents, and other materials directly related to a student which are maintained by a school or by one of its agents." Students may not, however, have access to confidential letters and recommendations placed in their files before January 1, 1975, provided, however, that such communications are not used for purposes other than those for which they were specifically intended.

Although colleges may not ask for a general waiver, it is possible for students to waive their rights of access to future confidential recommendations in the areas of admissions, job placement, and receipt of awards, under certain limitations such as requiring that a student be notified of the names of all persons making recommendations.

Students do not have access to their parents' confidential financial statements. Neither may they have direct access to medical, psychiatric, "or similar records which are used solely in connection with treatment purposes and only available to recognized professionals or para-professionals in connection with such treatment." Students may, however, have a doctor or other qualified professional of their choice to inspect their records. Also, students do not have access to records kept by a college's law enforcement officers "if the personnel of a law enforcement unit do not have access to education records."

Although the law applies to college students of any age, parents of dependent students do have a right to information about their children, such as grades, without having to gain the student's consent.

Written consent of the student must be obtained in order for any person or agency to have access to student records. Without the written consent of

thee student, only designated persons or agencies with an appropriate "need to know" may have access to student records.

The law allows organizations such as the Educational Testing Service access to information "for the purpose of developing, validating, and administering predictive tests." These types of organizations also may have access to enough information to conduct follow-up studies to determine if their tests really do predict performance.

The /rendrent is not intended to prohibit the release of student names andd addresses as part of a school directory, although the institution would havve to give public notice of the kinds of information it planned to make available.

Personal information shall only be transferred to a third party on thee condiction that such party will not permit any other party to have access to such information without the consent of the student.

In the case of a subpoena or court order, the college student must be notified by the institution in advance of its compliance with such subbpoena or court order.

Although the full implications of this law for those concerned with

higher education may not be fully realized at the present time, an awareness of the provisions of that law and a sensitivity to the rights of privacy of students are essential.

If we know all of the answers we could simply find the questions that we face in education have been answered and inevitably resolve the issues at the university. But the answers are not that easily attained and that is why individuals must accept the responsibility of using their best judgment in making decisions--decisions which almost always are not agreed upon by everyone. But even the United States Supreme Court justices will strenuously disagree among themselves.

With additional time, I believe there is no more white responsibility in our society than that of preparing teachers--teachers who not only understand children and how they learn, but who have an understanding and appreciation of those ingredients necessary for a free and open society.

Individual freedom is indeed the cornerstone of a free society and eternal vigilance is necessary in order to ensure its survival. That survival is enhanced only if higher education flourishes as a responsible free marketplace of ideas in which the rights and responsibilities of all